

STATE OF MICHIGAN
COURT OF APPEALS

In re HARRIS/LATHAM/MASON, Minors.

UNPUBLISHED
January 21, 2021

No. 353819
Wayne Circuit Court
Family Division
LC No. 19-002046-NA

Before: JANSEN, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order of disposition, but challenges the trial court’s order of adjudication assuming jurisdiction of her children KL, MH, and RM under MCL 712A.2(b)(1) (failure to provide proper care or custody) and (2) (unfit home). We affirm.

I. BACKGROUND

Petitioner, the Michigan Department of Health and Human Services (the DHHS), filed a petition to make KL, MH, and RM temporary court wards. The petition alleged that respondent physically abused and neglected the children and failed to provide the children with proper supervision. Following an adjudication, the referee concluded that sufficient evidence was presented to exercise jurisdiction over the children. The referee took particular issue with respondent’s testimony that she continued to allow MH to go to her father’s home despite the fact that MH always returned from his care dirty and was injured in his care on multiple occasions. The referee also took issue with respondent’s testimony that she did not believe her father, Larry Latham, was competent enough to care for her children, but continuously left KL and RM in his care. Thereafter, the trial court entered an order of adjudication assuming jurisdiction over KL, MH, and RM under MCL 712A.2(b)(1) and (2), and made the children temporary court wards.

II. STATUTORY GROUNDS FOR JURISDICTION

Respondent argues on appeal that the trial court clearly erred by concluding that sufficient evidence was presented to exercise jurisdiction over her children under MCL 712A.2(b)(1) and (2). Respondent also argues that her due-process right to notice was violated because the referee relied on factual allegations to support its finding that statutory grounds existed to exercise jurisdiction over her children that were not contained in the petition. We disagree.

This Court reviews the trial court’s decision to exercise jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Clear error exists “if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* at 296-297. This Court reviews de novo whether a child protective proceeding complied with a parent’s due-process rights. *In re Dearmon*, 303 Mich App 684, 693; 847 NW2d 514 (2014).

However, respondent did not argue that her due-process right to notice was violated during the adjudication. Therefore, respondent’s constitutional challenge is unpreserved. Unpreserved constitutional issues are reviewed for plain error affecting a respondent’s substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *Id.* (quotation marks omitted), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

After conducting a preliminary investigation, the DHHS may petition the family division of the circuit court to take jurisdiction over a child. MCR 3.961(A); *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019). “The petition must contain, among other things ‘[t]he essential facts’ that, if proven, would allow the trial court to assume jurisdiction over the child.” *In re Ferranti*, 504 Mich at 15, quoting MCR 3.961(B)(3). After receiving the petition and holding a preliminary hearing, the trial court “may authorize the petition upon a finding of probable cause that one or more of the allegations are true and could support the trial court’s exercise of jurisdiction under MCL 712A.2(b).” *In re Ferranti*, 504 Mich at 15. If the trial court authorizes the petition, an adjudication is held at which the trial court must determine whether it “can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so that it can enter dispositional orders, including an order terminating parental rights.” *Id.* If a trial is held, “ ‘the petitioner has the burden of proving by a preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition.’ ” *Id.*, quoting *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

In this case, the petition requested that the court take jurisdiction over KL, MH, and RM under MCL 712A.2(b)(1), (2), and/or (3). MCL 712A.2(b)(1), (2), and (3) provide the court with jurisdiction, in relevant part, as follows:

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. . . .

(3) If the juvenile is dependent and is in danger of substantial physical or psychological harm. . . .

When orally stating her findings, the referee did not specifically state under which statutory ground she found jurisdiction. Rather, the referee stated that she concluded that jurisdiction existed on the basis of the evidence presented. The referee also stated that she had the most trouble with respondent's testimony, "[n]otwithstanding . . . everything else that was said, the shove, the tug of the hair, even the—the leaving the kids with [KL and Latham]." The referee noted that she was troubled by respondent's testimony that she continued to allow MH to go to her father's home despite the fact that MH continuously came home from her father's home dirty, and sustained a black eye, lost a tooth, split her lip, and suffered bruises while in his care. The referee also stated that she took issue with respondent's testimony that she believed that Latham was incompetent and unable to care for himself, but continuously left KL and RM in his care.

The order of adjudication indicates that the statutory grounds to exercise jurisdiction over the children were the failure to provide, when able to do so, support, education, medical, surgical, or other necessary care for health or morals of the children, abandonment by parents, and because the children had an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of the parent. As a preliminary matter, we conclude that "abandonment by parents" was only marked on the order of adjudication as a statutory ground for jurisdiction regarding the fathers of KL and RM. This is because, after considering the evidence presented regarding the fathers of KL and RM, the referee concluded that they had abandoned KL and RM.

With respect to respondent, the order of adjudication detailed the evidence which it relied on to support the finding that statutory grounds to exercise jurisdiction over KL, MH, and RM existed. The order of adjudication noted that KL testified that respondent knocked RM down, pulled MH's hair, hit MH with a cell phone charger cord causing bruising, and would leave RM and MH in KL's care for 12 hours at a time. The order of adjudication also noted that Marquita Washington, an employee of DHHS, testified that respondent admitted to knocking down RM and pulling MH's hair as a form of discipline. Washington also testified that respondent has had prior cases with Children's Protective Services (CPS) and been provided services as a result. The order of adjudication also noted that respondent testified that she gave RM a "slight shove," hit MH with a cell phone charger cord, relied on KL to care for RM and MH for 12-hour periods of time, and she continued to allow MH to be in her father's care and did not call CPS, despite the fact that MH always returned from his care dirty and had sustained multiple injuries while in his care. It is well established that a court speaks through its written orders rather than its oral pronouncements. *In re KMN*, 309 Mich App 274, 287; 870 NW2d 75 (2015). Therefore, as evidenced by the order of adjudication, the trial court relied on more than just respondent's testimony regarding her beliefs about Latham's ability to care for her children and her decision to allow MH to return to her father's care to find that statutory grounds existed to exercise jurisdiction over her children under MCL 712A.2(b)(1) and (2).

Furthermore, the evidence presented at the adjudication supports the findings by the referee and trial court that statutory grounds to exercise jurisdiction were established by a preponderance of the evidence under MCL 712A.2(b)(1) and (2). At the adjudication, evidence was presented to establish that respondent physically abused and neglected RM and MH by a preponderance of the evidence. KL testified that respondent would push RM to the ground if RM got into respondent's way. Respondent admitted that she gave RM a "slight shove" when RM got into her way. Respondent justified pushing RM (who was less than a year old at the time) to the ground by stating that RM had "two eyes," RM knew to get out of her way, and that they were playing a game. KL also testified that respondent would pull MH's hair and would hit MH with a cell phone charger cord or an open hand if MH was not listening, or was crying or yelling. Washington confirmed this testimony and testified that respondent previously admitted to her that respondent would pull MH's hair as a form of discipline. Respondent also admitted that she would pull MH's hair as a form of discipline, but denied ever hitting MH with anything other than an open hand. Respondent also explained, however, that a cell phone charger cord had "made contact with" MH, and she would threaten to hit the children.

Evidence was also presented at the adjudication regarding respondent's improper supervision. The evidence demonstrated that respondent would leave MH and RM in the care of KL and Latham all day on Saturdays and Sundays and would sometimes not return on Saturday nights. Respondent justified leaving KL to care for MH and RM with the fact that Latham was also home, but also testified that she did not believe that Latham was competent enough to take care of himself, let alone her children. Respondent also testified that between June 2019 and August 2019, MH would be in her father's care two or three days a week. Respondent could not, however, remember a single time that MH returned home her father's home clean, and MH sustained multiple injuries on separate occasions while in his care. Despite MH sustaining multiple injuries in her father's care and always returning home dirty, respondent continued to allow MH to be in her father's care and never called CPS. Furthermore, the evidence demonstrated that respondent has had four prior CPS cases; three were substantiated for physical abuse, and respondent received services for the two most recent cases which were in June 2016, and November 2017.

On the basis of the evidence presented, the trial court did not clearly err by finding that respondent failed to provide proper care and custody for her children and that respondent maintained an unfit home for the children. Evidence was presented that respondent pushed or shoved RM, would hit MH and pull MH's hair, would leave MH and RM in the care of KL and with Latham, whom respondent did not believe was fit to care for her children, and failed to protect MH by returning MH to her father's care. This Court is to defer to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C); *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). Therefore, in light of this evidence, the trial court's findings were not clearly erroneous, and the trial court did not err by exercising jurisdiction under MCL 712A.2(b)(1) and (2).

Respondent also argues that she was denied the due-process right to notice of the allegations that she left her children in Latham's care, despite believing that Latham was unable to care for her children, and that she continued to allow MH to return to her father's care, despite MH suffering multiple injuries in his care and always returning dirty. We agree that this

information was not included in the petition, but conclude that the referee's consideration of respondent's testimony did not constitute a violation of respondent's due-process right to notice.

As previously discussed, to initiate a child protective proceeding, a petitioner must file a petition which sets forth "basic information about the children and the parents, as well as '[t]he essential facts that constitute an offense against the child' with a citation to the relevant provisions of the juvenile code." *In re Dearmon*, 303 Mich App at 694, quoting MCR 3.961(B)(1) through MCR 3.961(B)(4). A respondent in a child protective proceeding is entitled to notice of an adjudication and must be served with the petition. MCR 9.921(B)(1)(a). Respondent does not contest that she was provided proper notice of the adjudication or that the petition sets forth facts which constituted an offense against her children. Rather, respondent argues that the referee erred by considering her testimony at the adjudication.

At the adjudication, respondent testified that she left her children in Latham's care despite her belief that he was unfit to care for them, and that she continued to allow MH to return to her father's care despite MH always returning from his care dirty and suffering multiple injuries while in his care. We agree that this information was not contained in the petition. However, at the adjudication, the trial court must determine whether the petitioner has established by a preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition. *In re Ferranti*, 504 Mich at 15. The evidence which respondent contests on appeal was offered by respondent and directly supports the statutory grounds alleged in the petition. Additionally, as previously discussed, in addition to this portion of respondent's testimony, the referee also considered the testimony of KL, Washington, and the rest of respondent's testimony. Therefore, it was not a clear or obvious error for the referee to consider this portion of respondent's testimony, in addition to the rest of the evidence presented, and conclude that statutory grounds for jurisdiction existed.

Affirmed.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Riordan